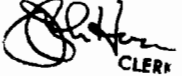


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
APR 05 2016

CLERK

JESSE LYLE FLOREK,

Petitioner,

vs.

MICHAEL DOOLEY; and
MARTY JACKLEY, The Attorney
General of the State of South Dakota,

Respondents.

CIV 15-4117

ORDER

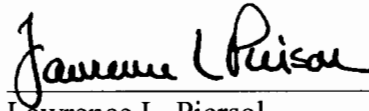
Petitioner Jesse Lyle Florek, an inmate at the Yankton Trustee Unit, has applied for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Magistrate Judge Duffy issued a Report and Recommendation recommending that the Petition be dismissed with prejudice. After conducting an independent review of the record, including Petitioner's Objections, Doc. 13, the Court agrees with the Magistrate Judge. The Court notes that this case does not implicate First Amendment interests, so the vagueness challenge is evaluated based only on the facts of this case. On an as-applied basis, SDCL § 26-10-1 is not federally constitutionally vague. There may be some factual situations which arise where the statute is vulnerable to a vagueness challenge, but not under the present facts. Accordingly,

IT IS ORDERED:

1. That Petitioner's Objections, Doc. 13, are DENIED, and the Magistrate Judge's Report and Recommendation, Doc. 12, is ADOPTED by the Court.
2. That Respondents' Motion to Dismiss, Doc. 11, is GRANTED.
3. That Petitioner's Application for Writ of Habeas Corpus, Doc. 1, is DENIED with prejudice.

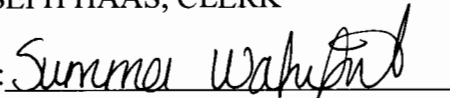
Dated this 5th day of April, 2016.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lawrence L. Piersol", written over a horizontal line.

Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: A handwritten signature in black ink, appearing to read "Summer Wahyudi", written over a horizontal line.
DEPUTY